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Supreme Court of the United States

October Term, 1975

No. 75-565

PLAIN DEALER PUBLISHING CO.,
Petitioner,

vs.

CLEVELAND TYPOGRAPHICAL UNION NO. 53, *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

1. Federal Jurisdiction Is An Issue in This Case.

Petitioner asserts that the Federal Courts have jurisdiction of this case because it was one brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. §185. However, one of the issues in this case is whether or not Federal Courts do have jurisdiction under Section 301 or whether Federal Courts may not take jurisdiction because of the terms of the Norris-LaGuardia Act. 29 U.S.C. §§101, et seq. That issue must be determined before the question of jurisdiction can be fully answered.

2. The Facts.

Basically the facts as reported by the Petitioner are accurate and will give the Court the basis upon which to determine whether or not certiorari should be granted. However certain facts which give this case its unique setting were totally omitted by the Petitioner. All of the omitted facts deal with the extensive testimony in this case concerning the violence which occurred at the beginning and during the first few days of this strike. That is the relevant period.

The strike began at 12:01 a.m. on Friday, November 1, 1974. The strike was legal because the contract between the Petitioner and the Cleveland Newspaper Guild had expired. A violent, mass picketing situation immediately developed at the premises of Petitioner. The chief witness for the Petitioner, Assistant to its Business Manager Leo Ring, testified: "It was not safe. I wouldn't have gone in myself."

The Petitioner reacted to that situation by seeking an injunction against the Guild in state court. A temporary restraining order limiting and regulating picketing was granted late on Friday afternoon. This case was filed in the District Court before the injunctive order issued by the state court had even been served.

In spite of the danger, members of Cleveland Typographical Union No. 53 (Printers), one of the Defendants, attempted to enter work at 11:00 p.m. that night. A large group of Printers were met by an even larger group of Newspaper Guild members and their supporters and were turned back. In spite of that violent confrontation another attempt was made to enter the building by the Printers at about 2:00 a.m. At that time the police were present and with their aid the Printers began to enter the building when a scuffle with one of the security guards required the Printers to withdraw.

On Saturday morning the Printers attempted to enter the building in small groups rather than in one large group. They were turned back again. The President of the Printers Union attempted to enter the building later that morning and he was turned back with a series of very violent threats made by officers of the Newspaper Guild while the police were present reading the terms of the state court injunction to the pickets.

In addition, officers and members of Cleveland Stereotypers Union No. 22 attempted to gain entrance to the building at about 9:30 on Saturday morning and were also turned back with serious threats of violence against the employees and their families, and an injury to one of the stereotypers.

On Saturday afternoon, at the request of the District Court, Counsel and Officers of all the Unions were present for a further conference. The District court requested that further attempts to enter the building be made and suggested that Counsel accompany the parties. The hearing was set to begin on Monday morning.

On Sunday afternoon thirty-five to forty Printers accompanied by their Officers and by Counsel attempted to enter the building once more. They were met by a group estimated to range in size from 60 to 100 Guild members and their supporters. Again threats of violence and the possibility of substantial bloodshed were evident. The Printers turned around once more. Representatives of the Stereotypers and the Cleveland Newspaper Printing Pressmen's Union No. 5 (Pressmen) who are also Defendants in this case witnessed this confrontation from across the street. Officers of the Cleveland Mailers Union No. 12 (Mailers) were kept advised of developments.

In spite of the fact that representatives of the Petitioners were aware that an attempt would be made to enter the building on Sunday afternoon and were also aware of

the circumstances surrounding the other attempts to enter the building, Petitioner never tried to have protection from police or sheriff's deputies at any time that employees represented by the Defendant Unions were trying to enter the building. Also The Plain Dealer never took any action to enforce the state court order nor to bring any charges of contempt against the Newspaper Guild or any of its Officers throughout the entire strike.

3. Proceedings Below.

On Monday, November 4, 1974 the hearing on the Motion for a Temporary Restraining Order filed by Petitioner began. During that hearing, upon the suggestion of the Court and the agreement of the parties, the proceedings were converted into a hearing on a Motion for a Preliminary Injunction. After three and one-half days of hearing, that Motion was denied. The Order of the District Court was appealed and affirmed. Then the Petition seeking certiorari was filed. The case has not yet been tried on the merits.

REASONS FOR DENYING THE WRIT

1. This Case Requires the Resolution of Many Unique Issues Not Worthy of Further Review.

The District Court denied the Motion for Preliminary Injunction for four separate and distinct reasons. The Court of Appeals affirmed all of the grounds set forth by the District Court. One of the issues in this case is whether a work stoppage that does not begin over an issue which can be resolved by final and binding arbitration may be enjoined by a Federal District Court in conformity with the Norris-LaGuardia Act. That issue is already before

this Court in the case of *Buffalo Forge Co. v. United Steelworkers*, ___ F.2d ___, 89 LRRM 2303 (2d Cir.) *cert. granted*, 44 U.S.L.W. 3234 (Oct. 26, 1975). There is no question that issue should be resolved by this Court because of the substantial conflict between more than half of the circuits. The cases setting forth that conflict have all been collected by the Petitioner at pages 13 and 14 of the Petition, so we will not repeat them here. Petitioner has sought certiorari solely of this issue.

However, there are three other issues which caused the District Court to refuse to issue an injunction in this case. This case cannot be decided without resolution of those issues and the Respondents contend that granting of certiorari in this case would either require the Court to deal with those other issues, none of which are likely to be repeated or are of such significance that they should be considered by this Court, or have consideration by the Court not resolve this litigation. Each of these other issues may be summarized as follows.

A. *Violence and Threats Prevented Working—There Was No Strike.*

The District Court had before it all the evidence which has been summarized above in the additional recitation of the facts. After considering all the evidence the District Court stated that ". . . the Court does believe that an attempt to forcibly cross the picket line does present a real potential for violence." (App. B, p. 40)[1]

Based on the facts as presented the District Court found that the Stereotypers and the Printers Unions were not on strike but that their employees failed to report to

[1] All citations to the Appendix in this response are to the Appendices which are attached to the Petition for Writ for Certiorari unless indicated otherwise.

work only because of the threats of violence and the generally violent situation at the picket line. Since the employees were not on strike the District Court found that there was nothing which it could enjoin under any view of the law as the right not to work in an unusually dangerous situation is fully protected by Section 502 of the Labor Management Relations Act. 29 U.S.C. §143. That issue could not be separated from the other issues in this case as the violent atmosphere of the picket line is part of the situation in which the Court made its ruling.

B. *All The Contracts Did Not Permit Arbitration of This Dispute.*

The basic claim of the Petitioner is that each of the contracts in this case made the Unions the exclusive source for providing employees to do the work within the jurisdiction of the contract of each of the four Unions. These provisions are what the Petitioner calls the "manning" provisions which were the basic underpinning for its seeking injunctive relief. However this is not true in regard to both the Pressmen and the Stereotypers. The contracts of both of those Unions permit the Employer to seek employees other than those referred to it by the Unions if either Union is unable to provide sufficient employees for the needs of the Employer. The parts of those contracts which permit the employer to seek other employees were interestingly enough omitted from the Appendix which the Petitioner attached to its Petition. Therefore the full clauses involved are reproduced in Appendix 1 of this response. Since Pressmen and Stereotypers could be obtained from other sources there could not be a failure to man jobs which could be a contractual violation which would give rise to a truly arbitral issue which would *realistically* permit the Petitioner to seek injunctive relief against those two Unions.

The District Court found that the grievance and arbitration clauses of the Pressmen's Union contract did not give rise to a no-strike obligation. The District Court found that the Stereotypers contract did not make failure to cross a picket line an arbitrable issue under any view of the law. The District Court also found that in the Printers Union and Mailers Union contracts only because of the existence of "picket line" clauses was it even arguable that the issue involved here could be arbitrated. Even there the Court characterized the contracts as "borderline situations" (App. B, p. 38).

Once again these issues would have to be treated in this case whereas the *Buffalo Forge* case, *supra*, which is already before the Court, is concerned with no-strike and binding arbitration clauses which clearly present the basic issue which has divided the circuits. That is the issue which the Court should resolve and it should not be concerned with the other issues in this case which arise in a unique industry with unique provisions in its collective bargaining contracts which are not found in most other collective bargaining agreements.

C. *Balancing of the Equities Required Denial of the Injunction.*

The District Court also found that by balancing the public interest in not having a violent labor dispute raging in the streets of Cleveland against the interest of the Petitioner in obtaining injunctive relief, that it would not have issued an injunction in this case (App. B, pp. 39-40). Therefore in order to resolve this case one would have to consider the balancing of the equities which is clearly something that turns uniquely on the facts of this case and

is not relevant to any other situation. This Court should not be concerned with that either. This case is an especially interesting one in that regard because of the absolute failure of the Petitioner to enforce its state court injunction. If the limitations on picketing promulgated by the state court had been enforced then employees represented by the Defendant Unions would have been able to enter the premises of the Petitioner.

CONCLUSION

The basic issue as to whether or not the Norris-LaGuardia Act forbids Federal District Courts from issuing injunctions in cases where the underlying dispute is not arbitrable between the parties before the Court is one which this Court should and will resolve in the *Buffalo Forge* case. Certiorari should not be granted in this case which will only make the resolution of that basic issue more difficult. Consideration of this case by this Court will not ultimately determine the dispute between these parties. For all these reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

1. Excerpt from Contract Between The Plain Dealer Publishing Co. and Cleveland Newspaper Printing Pressmen's Union No. 5.

Union Referrals

Section 38 (a). The Employers desire to have a reliable source for obtaining their pressmen employes and the Union represents that it has available for employment persons with the necessary experience and qualifications to perform work of the type and character covered by this agreement in accordance with the terms thereof and hereby agree to supply such competent pressmen. Applicants for employment shall be referred to the Employers on a non-discriminatory basis and such referrals shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, policies, constitutional provisions or any other aspect, obligation or requirement of Union membership.

(b) Referrals as aforesaid shall be made by the Union whenever either Employer requires pressroom employes over and above the number of its regular situation holders and regular substitutes, including apprentices and flymen.

(c) In the event additional help is required and the Union fails to supply such help, it is understood that the work required to produce the several editions shall proceed without interruption.

(d) If at any time an Employer determines that it needs more men than those made available by the Union as provided herein, such Employer may procure employes from any other source.

(e) The Employers may reject any job applicants referred by the Union.

2. Excerpt from Contract Between The Plain Dealer Publishing Co. and Cleveland Stereotypers Union No. 22.

Union Referrals

Section 36 (a). The Publisher desires to have a reliable source for obtaining stereotype employes and the Union represents that it has available for employment persons with the necessary experience and qualifications to perform work of the type and character covered by this agreement in accordance with the terms thereof and hereby agree to supply such competent stereotypers. Applicants for employment shall be referred to the Publisher on a non-discriminatory basis and such referrals shall not be based on, or in any way affected by, union membership, bylaws, rules, regulations, policies, constitutional provisions, or any other aspect, obligation or requirement of Union membership.

(b) Referrals as aforesaid shall be made by the Union whenever the Publisher requires stereotype employes over and above the number of its regular situation holders and apprentices.

(c) In the event additional help is required and the Union fails to supply such help, it is understood that the work required to produce the several editions shall proceed without interruption.

(d) If at any time the Publisher determines that it needs more men than those made available by the Union as provided herein, the Publisher may procure employes from any other source.

(e) The Publisher may reject any job applicants referred by the Union.